

1 did have some administrative matters to cover before you
2 took the stand so, having said that, you're excused. Thank
3 you sir.

4 THE WITNESS: You're welcome.

5 MR. SHOOK: Thank you, Mr. Sherwood.

6 THE COURT: Why don't we go on the record.

7 (There was a brief recess.)

8 THE COURT: We did move this into evidence and I
9 didn't rule on it so this is Adams Exhibit Number 87, for
10 identification and, there being no objections, it is now
11 received into evidence as Adams Exhibit Number 87.

12 (The document referred to,
13 having been previously marked
14 for identification as Adams
15 Exhibit No. 87 was received in
16 evidence.)

17 MR. COLE: Thank you, Your Honor.

18 THE COURT: Then I take it there's nothing more to
19 do here in the courtroom. Is that correct? Anything?
20 We'll be back here then at 1:30 for Ms. Swanson. Thank you
21 very much.

22 (Whereupon, at 11:25 a.m., Monday, June 19, recess was
23 taken until 1:32 p.m., this same day.)

24 //

25 //

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(1:32 p.m.)

THE COURT: We're on the record and set to go. Is there anything of a preliminary nature?

MR. HAYS: Yes, Your Honor. I have a couple, two preliminary matters.

THE COURT: Mr. Hays. Good afternoon sir.

MR. HAYS: Yes. Good afternoon, Your Honor. How are you, Your Honor?

THE COURT: I'm fine, Thank you.

MR. HAYS: The first matter is a request that we had submitted in our papers that we submitted, I believe, to you last Thursday around noon, regarding conditioning Ms. Swanson's testimony on the basis of payment by, some payment by Reading of the fees and expenses that we've incurred. And we actually had two parts to that request, Your Honor. The first was that Your Honor simply order them to do it, and that's still pending before Your Honor. The second part of that request is that any testimony by Ms. Swanson be conditioned upon the payment by Reading of those fees and expenses.

And I should add, Your Honor, that in addition to the \$24,000 that we submitted, I think that was June 8th, we've incurred since then thousands of dollars of additional fees and expenses resulting from production of the

1 additional documents, and we intend to submit a revises
2 accounting on that score of the additional fees and expenses
3 we've incurred. But at this point, there is this request
4 pending before Your Honor that any testimony of Ms. Swanson
5 be conditioned upon an agreement by Reading to pay the fees
6 and expenses heretofore submitted.

7 THE COURT: Well, let me permit Mr. Hutton to
8 address that.

9 MR. HUTTON: Your Honor, I think it's a totally
10 inappropriate request. We've set forth our showing as to
11 why we don't think any payment is warranted, and I think
12 what he's asking for is unprecedented and totally
13 inappropriate.

14 THE COURT: Well, as I've indicated before, and
15 I'll indicate it again, I have got this question under
16 advisement. I'm just not prepared to rule on it right now,
17 and I'm not going to allow this, which really a tangential
18 issue, to interfere with the progress of the case. I've got
19 several ideas in mind in terms of how I intend to dispose of
20 it, but I'm not inclined to announce that right here today.
21 I should add, I certainly would -- Do you have anything to
22 add to this?

23 MR. SHOOK: I'd be happy to stay out of this.

24 THE COURT: There you are.

25 MR. HAYS: Very well, Your Honor.

1 THE COURT: I understand what you're position is.

2 MR. HAYS: Yes. I mean Mr. Hutton objected. We
3 don't believe that he has any basis at all in terms of the
4 power of this court to order that. We think it's quite
5 clear from the rule itself that Your Honor has ample
6 authority to order that they pay. But in the event there
7 were any question about that, another way of proceeding, of
8 course, would be to simply any testimony by Ms. Swanson on
9 the agreement, which I think the Court also has ample power
10 to do. And that was the point of these alternative
11 requests, as they were. But I understand that the court's
12 ruling that you intend to reserve on this.

13 THE COURT: Well, yes. And I understand what
14 you're saying, but I want to make two things clear. First
15 of all, there is no question in my mind -- under, I think
16 it's 313 that I've got -- that I have the authority to
17 require the payment of costs, expenses, whatever the
18 language is of the rule, with respect to a third party
19 producing information in discovery. The general authority
20 is there.

21 The application of it to this case, and
22 particularly in light of the amount of money that we're
23 concerned with, plus the question of the legal fees, is
24 something that I'm just not prepared to issue a ruling from
25 the bench on. I still have this under consideration, but

1 under serious consideration. Third, what I had tried to do
2 a week ago was to get the parties to negotiate to this, and
3 as I understand it, Mr. Hutton has offered to at least pay
4 the photocopying expenses.

5 MR. HAYS: That's a very small percentage on it,
6 Your Honor, of the fees and expenses we've incurred here. I
7 mean, that's, I think, something in the order of \$1,000 is
8 my recollection, and our total fees and expenses are 20
9 times that.

10 THE COURT: I understand that, but I say that
11 there's been -- at least that much has been advanced, and I
12 think that's an indication, certainly, that Reading is not
13 just throwing this back in my face, so I'm giving this a lot
14 of consideration, but under the circumstances of how this
15 case is progressing, I can't do it today.

16 MR. HAYS: Very well, Your Honor. The second
17 point is that Your Honor had indicated in our prior hearing
18 that we had had on the discovery issues, I think it was a
19 couple of weeks ago, that this was not going to be, the
20 testimony of Ms. Swanson, or the inquiry of Ms. Swanson was
21 not going to be a fishing expedition, that it was supposed
22 to be targeted, specific questions. And we would submit
23 that we just wanted to make sure that that was the
24 understanding of Reading's counsel at this time, because I
25 know that Your Honor has specifically ruled that.

1 And there are basically three conversations that
2 the records that we've turned over reflect between Ms.
3 Swanson and Mr. Gilbert. And we would respectfully submit
4 that should take a total of maybe, you know, 30 minutes or
5 40 minutes to inquire about, and that's really the guts of
6 this. And we would just ask the Court's attention to this
7 matter so that we don't wind up in what is essentially a
8 discovery proceeding, because Your Honor specifically
9 directed that we're going to have trial testimony here
10 that's directed to the issues in this case, not to any
11 fishing expedition.

12 THE COURT: Well, if that's what you're here for
13 today, Mr. Hays, then I'm not going to give any special
14 instructions to counsel from Reading. We've been down this
15 road for a couple weeks in terms of the discovery so I don't
16 have anything more that I need to say.

17 MR. HAYS: Very well, Your Honor.

18 THE COURT: I just, could I just ask you briefly,
19 just identify yourself for the record.

20 MR. HAYS: Yes.

21 THE COURT: You've done this before, so, and
22 exactly what capacity you are here in today.

23 MR. HAYS: I'm Michael Hays, and I'm representing
24 Ms. Swanson.

25 THE COURT: That's it. Anything else?

1 MR. HAYS: Your Honor, on a much more mundane
2 level, we have provided the reporter with two copies of
3 Adams Number 87, Mr. Sherwood's notes, the three-page
4 document for Mr. Sherwood, which you received this morning
5 into evidence subject to our providing that reporter copies.
6 That has been done during the lunch break.

7 THE COURT: All right. Thank you very much.

8 MR. HAYS: You're welcome. Okay. Ms. Swanson,
9 you've been very patient. Please come forward.
10 Whereupon,

11 ANNE SWANSON
12 having been first duly sworn, was called as a witness herein
13 and was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. SOUTHARD:

16 Q Good afternoon, Ms. Swanson. I'm Dennis Southard.
17 I introduced myself earlier. Thank you for coming in this
18 afternoon. Just for the record would you please state your
19 full name and address.

20 A My name is Anne Swanson, S-W-A-N-S-O-N. My
21 address at home? Is that what you want?

22 Q Home or business.

23 A My business address is the law firm of Dow,,
24 D-O-W, L-O-H-N-E-S, Dow,, Lohnes & Albertson,
25 A-L-B-E-R-T-S-O-N. It's 1200 New Hampshire Avenue, N. W.,

1 Washington, D.C. 20036.

2 Q I understand correctly that you are an attorney
3 with that law firm?

4 A Yes.

5 Q Is there a particular area of practice in which
6 you concentrate?

7 A I'm in the communications group.

8 Q Your Honor, I've taken the liberty of putting our
9 exhibits for Ms. Swanson on the witness table. There's also
10 a copy of Adams, Phase III Exhibit there, as well. Ms.
11 Swanson, if you could direct your attention to the first
12 Exhibit in the black binder, Exhibit Number 50.

13 (The document referred to was
14 marked for identification as
15 Reading Exhibit No. 50.)

16 THE WITNESS: Does Mr. Hays have a set of these
17 also.

18 BY MR. SOUTHARD

19 Q Yes, he does.

20 A What was that? Number 50 is it we're looking at?

21 Q Exhibit, it's Reading Exhibit 50. It's an 18-page
22 document, and I'll just ask you if you could identify this
23 document for us.

24 THE COURT: This is Exhibit 50 now for
25 identification.

1 MR. SOUTHARD: That's correct, Your Honor.

2 THE WITNESS: These are invoices from Dow, Lohnes
3 & Albertson.

4 BY MR. SOUTHARD:

5 Q These are the actual invoices?

6 A These are copies of invoices that were sent to
7 Telemundo Network by Dow, Lohnes & Albertson.

8 Q A number of the narrative entries are followed by
9 the word "Swanson." Does that refer to you?

10 A That refers to me.

11 Q Are these narratives made at or about the time of
12 the events that they reflect?

13 A The invoices are a composite of time records that
14 are entered during the month preceding the production of the
15 invoice.

16 Q Okay. Are these, are the billing invoices, I take
17 it, prepared as a matter of Dow, Lohnes' business?

18 A Yes.

19 Q Is the firm's practice to make and record these
20 billing records?

21 A I didn't -- made and do what with them?

22 Q And record these billing records.

23 A Yes.

24 Q Who are the, who is the client for whom these,
25 this time is billed?

1 A Telemundo Network.

2 Q And do these entries, at least the ones that you
3 indicate are for our time, do they accurately reflect what
4 you did for Telemundo on the day that they're recorded?

5 MR. COLE: Objection. I think it would be more
6 appropriate to take her entry by entry examination of the
7 documents since the document is, I believe, 11 pages long
8 with multiple entries attributed to Ms. Swanson.

9 MR. HAYS: Well, may I --

10 THE COURT: Go ahead, Mr. Hays.

11 MR. HAYS: I was going to object to that, Your
12 Honor. I mean, he's, I think, at least tried to establish
13 that they were business records, and I don't see any
14 necessity for reviewing them entry-by-entry. I mean that
15 would take forever.

16 THE COURT: You've got a concession that these are
17 cases, these are records that were prepared and maintained
18 in accordance with the law firm. What more do you want to
19 establish?

20 MR. SOUTHARD: I just wanted to make sure that
21 they were accurate.

22 THE COURT: Certainly, there is a presumption of
23 accuracy. Unless you ask a specific line and Ms. Swanson
24 corrects that, I'm going to presume it to be accurate as
25 they're represented as a business record.

1 MR. SOUTHARD: Very good, Your Honor. At this
2 point, then, we'd offer Exhibit 50 into evidence.

3 THE COURT: Any objections.

4 MR. SHOOK: No objection.

5 THE COURT: Then Exhibit 50 for identification.

6 This is Reading Exhibit 50, which consists of, am I correct,
7 this is 18 pages?

8 MR. SOUTHARD: That's correct, Your Honor.

9 THE COURT: Eighteen pages. It is identified and
10 it is received in evidence as Reading Number 50.

11 (The document referred to,
12 having been previously marked
13 for identification as
14 Reading Exhibit No. 50 was
15 received in evidence.)

16 BY MR. SOUTHARD:

17 Q Ms. Swanson, if you could take a look at Reading
18 Exhibit 51, which is the next Exhibit in the black binder.
19 It's a two-page Exhibit. And could you identify that
20 Exhibit for us, please.

21 (The document referred to was
22 marked for identification as
23 Reading Exhibit No. 51.)

24 A This is a copy of, these two pages are copies of
25 excerpts from Dow, Lohnes & Albertson telephone reports by

1 client and by extension.

2 Q And if you can tell us briefly, what do they show?

3 A At the top they show the criteria that were put
4 into the computer when they were produced, they were
5 searching records between March 1st of '99 and October of
6 '99 from a certain extension. They're generated from phones
7 in Washington, D.C., and then they show the information
8 about particular calls.

9 Q I note here it says, "Extension," on the first
10 page, it says, "Extension 2534." Is that your telephone
11 extension?

12 A That's my telephone extension. And actually --

13 Q You were going to say up at the top is a record of
14 2534 or 2693?

15 A Yes.

16 Q And 2693 is?

17 A The extension of another partner in the law firm.

18 Q Are these entries, these telephone records kept in
19 the ordinary course of Dow, Lohnes's business?

20 A I never had any reason to think they weren't.

21 Q Your Honor, we would like to at this time move
22 Reading Exhibit 51 into evidence.

23 MR. COLE: Objection. Relevance. Mr. Southard
24 has not indicated, that I've heard, why these two pieces of
25 paper have anything to do with the issues in this case.

1 THE COURT: Well, we can either go through a *voir*
2 *dire* right now or see if this is covered in the course of
3 the examination of the witness. You could always move to
4 strike. What would you --

5 MR. SOUTHARD: Your Honor, I can, with one
6 question I can tie this up.

7 THE COURT: Go right ahead.

8 BY MR. SOUTHARD:

9 Q Ms. Swanson, the telephone records indicate,
10 appear to indicate telephone calls made to a number in
11 Chicago, area code 312-807-4651. Do you see that?

12 A I do.

13 Q Do you know whose telephone number that is?

14 A I believe at the time the calls were made that was
15 the phone number for Howard Gilbert.

16 MR. SOUTHARD: We would now move them into
17 evidence, Your Honor.

18 THE COURT: Do you still object?

19 MR. COLE: No, Your Honor.

20 THE COURT: They are received in evidence. The
21 motion is granted. That's Exhibit Reading Number 51. It's
22 two pages. It is now in evidence as Reading Number 51.

23 (The document referred to,
24 having been previously marked
25 for identification as

1 Reading Exhibit No. 51 was
2 received in evidence.)

3 BY MR. SOUTHARD:

4 Q Ms. Swanson, if you'll take a look at Exhibit 52
5 in the black binder. It's Reading Exhibit 52 for
6 identification. It's a 16-page document. Do you recognize
7 the documents that are included in Exhibit 52?

8 (The document referred to was
9 marked for identification as
10 Reading Exhibit No. 52.)

11 A This appears to be certain copies, pages of my
12 handwriting, although all the pages aren't here in sequence.
13 There's a page four missing. Is it supposed to be, how many
14 pages did you say are here?

15 Q It's a 16-page Exhibit.

16 A Actually, this copy has, goes up to 19 and then
17 it's got some gaps in there, so I'm not sure how many pages
18 I have in front of me.

19 Q I think you may be referring to the Bates stamp
20 number, MAS dash N19. Yes.

21 A Right. I'll take your word that there are 16
22 pieces of paper. I haven't counted them.

23 Q I'm referring, the Exhibit itself is a 16-page
24 document, and if you'll refer to the Reading Exhibit --

25 A No. I see your Exhibit pages.

1 Q Number. Yes.

2 A And I do see 6 -- yeah, there are 16 pages in your
3 Exhibit.

4 Q Very good.

5 THE COURT: Yes. We've never found him to count
6 wrong yet.

7 THE WITNESS: They were just in a different place
8 on this one. I didn't see them.

9 MR. SOUTHARD: We have an exceptional paralegal.
10 He's very good.

11 BY MR. SOUTHARD:

12 Q Ms. Swanson, do I understand that these are your
13 notes?

14 A These are my notes.

15 Q And is it your usual practice to take such notes
16 as part of your practice as an attorney?

17 A Sometimes I take them, sometimes I don't. It
18 depends on who I'm talking to, how many parties are on the
19 phone, how awake I am that day, if I'm kind of sleepy, I may
20 take notes to remind myself of what we said.

21 Q The notes are prepared at the time of the events
22 that they record?

23 A Generally. I may have gone back and, like, for
24 instance, on page two it has Mr. Shook's phone number in the
25 left hand margin. I don't know if I added that

1 contemporaneously with the call or later added that. About
2 the time I took them.

3 MR. SOUTHARD: Your Honor? We'd move for the
4 admission into evidence of Reading Exhibit 52 for
5 identification.

6 THE COURT: Exhibit 52. Is there any objection?

7 MR. COLE: Yes, Your Honor. For openers, on page
8 nine, if I might ask the witness a question about page nine.
9 It's the callback slip.

10 THE COURT: Page nine. I have it. Do you have
11 that Ms. Swanson?

12 BY MR. COLE:

13 Q Is that your handwriting?

14 A At the top of the slip it's not my writing.

15 Q Is this, did you prepare this slip?

16 A I think someone named Lynne whose name at the
17 bottom wrote my name at the top, the date, the time, who
18 called and the phone number and probably checked the box
19 "return call," and then the rest of the writing is mine.

20 Q And is all the other handwriting in this document
21 yours?

22 A Yeah, the rest of the writing is mine.

23 MR. COLE: I have no objection, Your Honor.

24 THE COURT: Then Reading's Exhibit Number 52,
25 consisting of 16 pages as identified is now received into

1 evidence. That's Reading Exhibit Number 52.

2 (The document referred to,
3 having been previously marked
4 for identification as
5 Reading Exhibit No. 52 was
6 received in evidence.)

7 MR. COLE: Your Honor, if I might just state for
8 the record that my lack of objection at this point is in
9 the interest of moving things along and is subject to a
10 motion to strike in the event that any of these documents
11 don't happen to be tied in to the issue through
12 cross-examination.

13 THE COURT: Very well.

14 MR. COLE: Thank you.

15 BY MR. SOUTHARD:

16 Q Ms. Swanson, I'm going to ask you to take a look
17 at the next two pages -- two exhibits in the black binder.
18 It's Reading Exhibit 53 and 54, for identification.

19 (The documents referred to
20 were marked for identification
21 as Reading Exhibits No. 53 and
22 54.)

23 A I have looked at them.

24 Q Do you recognize those exhibits?

25 A 53 appears to be a Xerox of the first page of a

1 daytimer, I presume, of mine. And on the second page is a
2 Xerox of two pages from a particular day from the month of
3 April, 1999. And then the same with 54. I'm assuming it's
4 the copy of the first page of the cover sheet of one of my
5 daytimers from July of '99, and then copies of some internal
6 pages from that particular daytimer.

7 Q Just briefly, if you could describe, what do
8 these, in your usual practice, what do you use these
9 daytimers for?

10 A I use them for many, many things. I use them to
11 keep track of appointments in my personal life. I use them
12 to keep track of appointments in my husband's personal life,
13 my parents' medical appointments, my step-daughter's school
14 issues. I use them to keep track of all my Bar activities.
15 I use them to keep track of the assignments I'm doing for
16 clients. I use them to keep track of internal firm
17 administrative things I have to do, and I use them to keep
18 track, roughly, of the time I spend on different matters
19 and, for the most part, the individuals with whom I speak.
20 If I have a long conversation with somebody, it's usually in
21 here, but not always.

22 Q To the extent that the entries relate to matters
23 you worked on for clients, if I, are those entries at or
24 about the time of the events that they record?

25 A I typically write the left hand side of the page

1 at the beginning of the day, making a list of things I have
2 to do that day. If I have a longer, running list of things,
3 I will then just write short synopses on the left. But
4 typically it's all the things I'm going to be doing on that
5 day. And on the right hand side, as the day progresses, I
6 keep rough track of what's going on.

7 MR. SOUTHARD: Your Honor, we would move Reading
8 Exhibits 53 and 54, for identification into evidence.

9 THE COURT: Well, let's take them one at a time.
10 Exhibit 53 has been identified as a two-page document, which
11 are entries of Ms. Swanson's daytimer, as she described it.
12 Any objection to receiving this into evidence.

13 MR. COLE: No, Your Honor.

14 THE COURT: Then, there being no objection,
15 Reading Exhibit Number 53, for identification, is received
16 into evidence.

17 (The document referred to,
18 having been previously marked
19 for identification as
20 Reading Exhibit No. 53 was
21 received in evidence.)

22 THE COURT: Fifty-four, same type of document.
23 It's a daytimer. It consists of six pages. Any objection
24 to that?

25 MR. COLE: None, Your Honor.

1 THE COURT: Then Reading Exhibit 54 is received
2 into evidence.

3 (The document referred to,
4 having been previously marked
5 for identification as
6 Reading Exhibit No. 54 was
7 received in evidence.)

8 MR. SOUTHARD: Thank you, Your Honor.

9 BY MR. SOUTHARD:

10 Q Ms. Swanson, if I could ask you to take a look at
11 Reading Exhibit 55, in the black binder?. Do you recognize
12 that document?

13 (The document referred to was
14 marked for identification as
15 Reading Exhibit No. 55.)

16 A It appears to be a copy of a letter that I wrote
17 that's dated April 26, 1999, to Ms. Anne Gaulke.

18 Q On page two, is that your signature?

19 A That's my signature for my first name -- Or my
20 middle name, excuse me. What I commonly use as my first
21 name.

22 Q Who is Anne Gaulke?

23 A She's an employee of the Telemundo Network.

24 Q The -- I note the first line of this letter
25 references WTVE-TV. What, if anything, was Ms. Gaulke's